

GAIL KWOK, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

vs.

NIVS INTELLIMEDIA
TECHNOLOGY GROUP, INC.,
TIANFU LI, SIMON ZHANG, and
ALEXANDER CHEN,

Defendants.

No. CV 11-2716 R (JCGx)

CLASS ACTION

EDWARD FRITISCHE,
INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

vs.

NIVS INTELLIMEDIA
TECHNOLOGY GROUP, INC.,
TIANFU LI, ALEXANDER CHEN,
SIMON ZHANG, RUXIANG NIU,
MINGHUI ZHANG, GENGQIANG
YANG, CHARLES MO, RODMAN
AND RENSHAW, LLC, AND
WESTPARK CAPITAL, INC.,

Defendants.

No. CV 11-3004 R (JCGx)

CLASS ACTION

ALI ARAR, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

vs.

NIVS INTELLIMEDIA
TECHNOLOGY GROUP, INC.,
TIANFU LI, ALEXANDER CHEN,
AND SIMON ZHANG,

Defendants.

No. CV 11-3857 R (JCGx)

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES

Joe Corrado, Douglas Ward, TC3 International sarl, Malcolm Vosbikian and Padmaraja Sutapalli (collectively, “Movant” or the “Corrado Group”) respectfully submit this memorandum in support of their motion for an Order, pursuant to Section 21D of the Securities Exchange Act of 1934 (the “Exchange Act”) and Section 27 of the Securities Act of 1933 (the “Securities Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”):

(1) consolidating the above-captioned related actions;

(2) appointing the Corrado Group as Lead Plaintiff for all persons, other than defendants, who: (a) purchased the securities of NIVS Intellimedia Technology Group, Inc. (the “Company” or “NIVS”) pursuant and/or traceable to the Company’s Secondary Public Offering commencing on or about April 20, 2010; and/or (b) purchased or otherwise acquired the securities of NIVS between March 24, 2010 and March 25, 2011, inclusive (the “Class Period”); and who are seeking to recover damages caused by Defendants’ violations of the federal securities laws (collectively, the “Class”); and

(3) appointing The Rosen Law Firm, P.A. as Lead Counsel for the Class.

I. PERTINENT BACKGROUND

On March 29, 2011 a law firm filed this action against Defendants¹ for claims under Sections 10(b) and 20(a) of the Exchange Act. On that same day, a law firm issued a PSLRA early notice advising potential class members of, among other things, the claims alleged in this case and the 60 day deadline for class members to move this Court to be appointed as lead plaintiff. A copy of the early notice is attached as Exhibit 1 to the Declaration of Laurence M. Rosen filed herewith (“Rosen Decl.” or “Rosen Declaration”).

Following the filing of the instant action, three more related actions were filed in this District:

<u>Case Name</u>	<u>Case No.</u>
<i>Gail Kwok v. NIVS Intellimedia Technology Group, Inc. et al.</i>	CV 11-2716 R (JCGx)
<i>Edward Fritische v. NIVS Intellimedia Technology Group, Inc. et al.</i>	CV 11-3004 R (JCGx)
<i>Ali Arar v. NIVS Intellimedia Technology Group, Inc. et al.</i>	CV 11-3857 R (JCGx)

On April 12, 2010 another related action was commenced in the U.S. District Court for the Southern District of New York, entitled *Schuler v. NIVS Intellimedia Technology Group, Inc., et al.*, No. 11-CV-2384 (JGK). Movant has filed concurrently herewith a substantially similar lead plaintiff motion.

The related complaints allege that NIVS, a Delaware corporation headquartered in the People’s Republic of China, and certain of its officers and directors violated the Exchange Act in connection with the Company’s issuance of

¹ “Defendants” refers to, collectively: NIVS Intellimedia Technology Group, Inc., Tianfu Li, Simon Zhang, and Alexander Chen.

1 materially false and misleading statements about the Company's true financial
 2 condition; and the issuance of materially false and misleading financial statements
 3 in its periodic reports filed with the Securities Exchange Commission ("SEC"). In
 4 addition, the *Fritische* action alleges that Defendants and certain Additional
 5 Defendants² violated Sections 11, 12(a)(2), and 15 of the Securities Act in
 6 connection with the Company's April 2010 Secondary Public Offer.

7 More particularly: The complaints allege that, on March 25, 2011, NIVS
 8 filed an 8-K with the SEC indicating that its independent auditor, MaloneBailey
 9 LLP ("MaloneBailey") had resigned effective March 23, 2011 (the
 10 "Resignation"), and that said auditor had identified potential illegal acts involving
 11 the Company's accounting records and bank statements and discrepancies in
 12 accounts receivable. In the resignation letter attached to the 8-K (the "Letter"),
 13 MaloneBailey stated that they had encountered "significant difficulties during the
 14 2010 audit" and had "found accounting fraud and irregularities." As a result,
 15 MaloneBailey announced that the financial statements for the first three quarters
 16 of fiscal year 2010 and for fiscal year 2009 could not be relied upon.

17 On March 24, 2011, in connection with the Resignation, trading in the
 18 Company's stock was halted, effectively rendering the Company's stock illiquid.
 19 NIVS stock remains halted to this day. As a result, plaintiffs and the class have
 20 been damaged.

21 ARGUMENT

22 II. THE RELATED ACTIONS SHOULD BE CONSOLIDATED

25 ² "Additional Defendants" refers to, collectively: Ruxiang Niu, Minghui Zhang,
 26 Gengqiang Yang, Charles Mo, Rodman & Renshaw, LLC, and Westpark Capital,
 27 Inc..

1 Consolidation of related cases is proper where, as here, the actions involve
 2 common questions of law and fact such that consolidation would prevent
 3 unnecessary cost or delay in adjudication. When actions involving a common
 4 question of law or fact are pending before the court, it may order a joint hearing or
 5 trial of any or all of the matters at issue in the actions; it may order all the actions
 6 consolidated; and it may make such orders concerning proceedings therein as may
 7 tend to avoid unnecessary costs or delay. Fed. R. Civ. P. 42(a); *see also*
 8 *Richardson v. TVIA*, 2007 WL 112344, at *2 (N.D. Cal. Apr. 16, 2007).

9 The PSLRA contemplates consolidation where “more than one action on
 10 behalf of a class asserting substantially the same claim or claims arising under this
 11 chapter has been filed.” 15 U.S.C. 78u-4(a)(3)(A)(ii); 15 U.S.C. §77z-
 12 1(a)(3)(A)(ii). As such, the PSLRA does not displace the traditional legal
 13 standards for consolidation under Fed. R. Civ. P. 42(a).

14 Each of the above-captioned related actions has been filed in this District
 15 alleging similar factual and legal grounds to support allegations of violations of
 16 Sections 10(b) and 20(a) of the Exchange Act and/or Sections 11, 12(a)(2), and 15
 17 of the Securities Act by the Defendants and/or Additional Defendants arising from
 18 the public dissemination of false and misleading information to investors.
 19 Accordingly, the above-captioned cases should be consolidated pursuant to Fed.
 20 R. Civ. P. 42(a) for all purposes.

21 **III. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF**

22 The PSLRA sets forth procedures for the selection of Lead Plaintiff in class
 23 actions brought under the Exchange Act and Securities Act. 15 U.S.C. § 78u-
 24 4(a)(3)(B); 15 U.S.C. §77z-1(a)(3)(B). The PSLRA directs courts to consider any
 25 motion to serve as Lead Plaintiff filed by class members in response to a
 26 published notice of class action by the later of (i) 60 days after the date of
 27 publication, or (ii) as soon as practicable after the Court decides any pending

1 motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B)(i) and (ii); 15 U.S.C. § 77z-1
2 (a)(3)(B)(i) and (ii).

3 The PSLRA provides a “rebuttable presumption” that the most “adequate
4 plaintiff” to serve as Lead Plaintiff is the “person or group of persons” that:

5 (aa) has either filed the complaint or made a motion in
6 response to a notice . . . ;

7 (bb) in the determination of the Court, has the largest financial
8 interest in the relief sought by the class; and

9 (cc) otherwise satisfies the requirements of Rule 23 of the
10 Federal Rules of Civil Procedure.

11 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); 15 U.S.C. § 77z-1 (a)(3)(B)(iii)(I); *Richardson*,
12 2007 WL 1129344, at * 2; (citing *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th
13 Cir. 2002)).

14 As set forth below, Movant satisfies the above criteria, has the largest
15 financial interest of any movant in this litigation, and is therefore the most
16 adequate plaintiff and should be appointed as Lead Plaintiff.

17 **A. Movant Is Willing to Serve as Class Representative**

18 The Corrado Group has made a timely motion in response to a PSLRA
19 early notice. *See* Rosen Decl., Ex. 1. Additionally, as set forth in the PSLRA
20 certifications of the members of the Corrado Group filed concurrently herewith,
21 each member attests that he has reviewed the complaint, adopts the allegations
22 therein, and is willing to serve as a representative of the class. *See* Rosen Decl. Ex.
23 2. Accordingly, the Corrado Group satisfies the first requirement to serve as Lead
24 Plaintiff for the class.

25 **B. Movant Has the Largest Financial Interest in the Action**

26 The PSLRA requires a court to adopt a rebuttable presumption that “the
27 most adequate plaintiff . . . is the person or group ... that . . . has the largest

1 financial interest in the relief sought by the class.” 15 U.S.C. § 78u-
 2 4(a)(3)(B)(iii); 15 U.S.C. § 77z-1 (a)(3)(B)(iii); *Cavanaugh*, 306 F.3d at 730.
 3 While the PSLRA does not specify precisely how to calculate the “largest
 4 financial interest”, the movant’s approximate losses in the subject securities is the
 5 best measure. *Richardson*, 2007 WL 1129344 at * 4 (citing cases).

6 With \$484,306.26 in total losses, the Corrado Group is not aware of any
 7 other movant that has suffered greater losses in NIVS stock during the Class
 8 Period³. See Rosen Decl., Ex. 3 (Corrado Group Loss Chart).

9 The Corrado Group is small enough that coordinated decision making will
 10 not present difficulties. The Securities and Exchange Commission has noted, and
 11 numerous courts have held, that small groups whose members all have suffered
 12 substantial losses, such as the Corrado Group, are suitable lead plaintiffs. See e.g.
 13 *In re Nature’s Sunshine Products, Inc.*, 2006 WL 2380965 (D. Utah Aug. 16,
 14 2006) (appointing group of three unrelated investors lead plaintiff); *In re Tyco*
 15 *Int’l Ltd. Sec. Litig.*, 2000 WL 1513772, at *4 n.7 (D.N.H. Aug. 17, 2000); *In re*
 16 *The First Union Corp. Sec. Lit.*, 157 F. Supp.2d 638, 643 (W.D.N.C. 2000); *In re*
 17 *Baan Co. Sec. Litig.*, 186 F.R.D. 214, 217 (D.D.C. 1999); *In re Universal Access,*
 18 *Inc., Sec. Lit.*, 209 F.R.D. 379, 384 (E.D. Tex. 2002); and *In re Oxford Health*
 19 *Plans, Inc. Sec. Lit.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998) (co-lead plaintiff group
 20 allows for broad representation and sharing of resources and experience).

21 Accordingly, the Corrado Group satisfies the largest financial interest
 22 requirement to be appointed as Lead Plaintiff for the class.

25 ³ As the Company’s stock has been halted since March 24, 2011, rendering it
 26 completely illiquid, Movant uses a \$0 per share value for NIVS stock in its loss
 27 calculations.

C. The Movant Satisfies the Requirements of Rule 23 of the Federal Rules of Civil Procedure

The PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, the Lead Plaintiff must “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc); 15 U.S.C. §77z-1(a)(3)(B)(iii)(I)(cc). Federal Rule of Civil Procedure Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

- (1) the class is so numerous that joinder of all members is impracticable,
- (2) there are questions of law or fact common to the class,
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

In making its determination that a movant satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification – a *prima facie* showing that the Movant satisfies the requirements of Rule 23 is sufficient. *Cavanaugh*, 306 F.3d at 730-31. At the lead plaintiff stage, “[t]he typicality and adequacy requirements of Rule 23 are the main focus...” and “[e]xamination of the remaining requirements [of Rule 23] are deferred until the lead plaintiff moves for class certification.” *Richardson*, 2007 WL 1129344, at * 4 (citing *Cavanaugh*, 306 F.3d at 730)).

The Corrado Group and each of its members fulfill all of the pertinent requirements of Rule 23. Each member of the Corrado Group shares substantially similar questions of law and fact with the members of the class, and their claims

1 are typical of the members of the class. Each of the Corrado Group members and
2 all members of the class allege that Defendants violated the Exchange and
3 Securities Acts by publicly disseminating false and misleading financial
4 statements about NIVS and its business. The Corrado Group and its members, as
5 did all of the members of the class, purchased Company stock at prices artificially
6 inflated due to Defendants' misrepresentations and omissions, and were damaged
7 thereby. These shared claims also satisfy the requirement that the claims of the
8 representative parties be typical of the claims of the class.

9 Thus, the close alignment of interests between Movant and other class
10 members, as well as the Corrado Group's desire to prosecute this action on behalf
11 of the class, provides ample reason to appoint the Corrado Group as Lead
12 Plaintiff.

13 **D. The Movant Will Fairly and Adequately Represent the Interests**
14 **of the Class and Is Not Subject to Unique Defenses**

15 The presumption in favor of appointing the Corrado Group as Lead Plaintiff
16 may be rebutted only upon proof "by a purported member of the plaintiffs' class"
17 that the presumptively most adequate plaintiff:

18 (aa) will not fairly and adequately protect the interest of the class;

19 or

20 (bb) is subject to unique defenses that render such plaintiff incap-
21 able of adequately representing the class.

22 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); 15 U.S.C. § 77z-1 (a)(3)(B)(iii)(II).

23 Movant's ability and desire to fairly and adequately represent the class has
24 been discussed in Section C, above. The members of the Corrado Group are not
25 aware of any unique defenses that Defendants could raise against any of them that
26 would render them inadequate to represent the class. Accordingly, the Court
27 should appoint the Movant as Lead Plaintiff for the class.

1 **IV. MOVANT’S SELECTION OF COUNSEL SHOULD BE APPROVED**

2 The PSLRA vests authority in the Lead Plaintiff to select and retain lead
3 counsel, subject to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v); 15
4 U.S.C. § 77z-1 (a)(3)(B)(v). The Court should only interfere with the Lead
5 Plaintiff’s selection when necessary “to protect the interests of the class.” 15
6 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa); 15 U.S.C. § 77z-1(a)(3)(B)(iii)(II)(aa).

7 The Corrado Group has selected The Rosen Law Firm, P.A. as Lead
8 Counsel. The Rosen Law Firm, P.A. has been actively researching the class’ and
9 Movants’ claims – reviewing publicly available financial and other documents and
10 gathering information in support of the claims against the Defendants.
11 Furthermore, The Rosen Law Firm, P.A. is experienced in the area of securities
12 litigation and class actions, having been appointed as lead counsel in securities
13 class actions in this District and in numerous courts throughout the nation. The
14 firm has prosecuted securities fraud class actions and other complex litigation and
15 has obtained substantial recoveries on behalf of investors. The resume of The
16 Rosen Law Firm, P.A. is attached as Exhibit 4 to the Rosen Declaration.

17 As a result of the firm’s experience in litigation involving issues similar to
18 those raised in this action, Movant’s counsel has the skill and knowledge that will
19 enable the firm to prosecute this action effectively and expeditiously. Thus, the
20 Court may be assured that by approving the Corrado Group’s selection of Lead
21 Counsel, the members of the class will receive the best legal representation
22 available.

23 **V. CONCLUSION**

24 For the foregoing reasons, Movant respectfully requests that the Court issue
25 an Order: (1) consolidating the above captioned related actions; (2) appointing the
26 Corrado Group as Lead Plaintiff of the class; (3) approving The Rosen Law Firm,
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1 P.A. as Lead Counsel; and (4) granting such other relief as the Court may deem to
2 be just and proper.

3 Dated: May 31, 2011

Respectfully submitted,

4
5 THE ROSEN LAW FIRM, P.A.

6 /s/ Laurence Rosen, Esq.

7 Laurence M. Rosen, Esq. (SBN 219683)

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12 [Proposed] Lead Counsel for Plaintiff
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2 **CERTIFICATE OF SERVICE**

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4 I, Laurence M. Rosen, hereby declare under penalty of perjury as follows:

5 I am the managing attorney of the Rosen Law Firm, P.A., with offices at
6 333 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. I am over the age
7 of eighteen.

8 On May 31, 2011, I electronically filed the following **MEMORANDUM**
9 **OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF THE**
10 **CORRADO GROUP TO CONSOLIDATE RELATED ACTIONS, FOR**
11 **APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF CHOICE**
12 **OF COUNSEL** with the Clerk of the Court using the CM/ECF system which sent
13 notification of such filing to counsel of record.

14 Executed on May 31, 2011

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18 /s/ Laurence Rosen
19 Laurence M. Rosen
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